
Services Agreement

WHEAT QUALITY AUSTRALIA LIMITED
(Company)

[INSERT NAME OF PARTY]
(Recipient)

Date:



Level 20, 135 King St Sydney NSW 2000
Tel: 61 2 9228 9200 Fax: 61 2 9228 9299 DX 123 Sydney

Level 9, 469 La Trobe St Melbourne VIC 3000
Tel: 61 3 9602 9444 Fax: 61 3 9642 0382 DX 402 Melbourne

Level 40, Central Plaza 1, 345 Queen St Brisbane QLD 4000
Tel: 61 7 3004 3500 Fax: 61 7 3004 3599 DX 248 Brisbane

Services Agreement

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Services Agreement

Details

Parties

Company	Name	WHEAT QUALITY AUSTRALIA LIMITED
	ABN	86 147 439 656
	Address	PO BOX 584 Gordon NSW 2072
	Telephone	02 984 45425
	Fax	n/a

Recipient	Name	[Insert name of party]
	ABN	
	Address	
	Telephone	
	Fax	

Date of Agreement

Terms

Introduction

- A. Wheat Quality Australia Limited (*Company*) is a not for profit company limited by guarantee which was established to undertake wheat variety classification and related activities from 1 January 2011.
- B. The objects for which the Company has been formed are set out in the Constitution.
- C. The primary objective of the Company is to ensure that the quality of the classes of wheat available in Australia, now and in the future, meet the processing and end product requirements of Australia's key markets both internationally and domestically.
- D. The Company will deliver on this objective primarily through the activities of the Wheat Classification Council (*Council*), which is responsible for establishing and maintaining the wheat variety classification system in Australia, and the Variety Classification Panel (*Panel*), which is responsible for assessing quality data of new varieties of wheat against the technical requirements of the classes of Australian wheat according to the policies and procedures set out by the Council in the Wheat Classification Guidelines.
- E. Engagement and consultation with all sectors of the Australian wheat industry, which will benefit from the activities of the Company, is fundamental to the achievement of the objectives of the Company. The Recipient, which is a wheat breeding company, is a participant in the Australian wheat industry and has agreed to have its wheat varieties classified by the Company under the wheat variety classification system in accordance with the terms of this Agreement.

It is agreed

1. Interpretation

- 1.1. In this Agreement, unless otherwise indicated by the context:
 - (a) *Application* means an application for classification of a wheat variety by the Recipient to the Company in accordance with the terms of this Agreement;
 - (b) *Board* means the board of directors of the Company;
 - (c) *Business Day* means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney;

- (d) *Constitution* means the constitution of Wheat Quality Australia Limited as amended from time to time, a copy of which is available at www.wheatquality.com.au;
- (e) *Council* means the Wheat Classification Council;
- (f) *Council Charter* means the Wheat Classification Council Charter as amended from time to time, a copy of which is available at www.wheatquality.com.au;
- (g) *Councillor means* a member of the Council;
- (h) *Event of Default* means:
 - (i) the Recipient breaches clause 6.3 of this Agreement;
 - (ii) a party breaches any provision of this Agreement which is capable of being remedied and does not remedy that breach within 14 days after receiving notice of the breach from the other party requesting the breach to be remedied;
 - (iii) if a party breaches any provision of this Agreement which is incapable of being remedied and compensation is not paid within 14 days after receiving a notice of breach from the other party requesting that compensation be paid;
 - (iv) a party becomes insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth);
 - (v) any step is taken (including without limitation, any application made, proceedings commenced, or resolution passed or proposed in a notice of meeting) for the winding up or dissolution of the party or for the appointment of an administrator, receiver, receiver and manager or liquidator to the party or any of its assets;
 - (vi) a party resolves to enter into or enters into a scheme of arrangement or composition with, or assignment for the benefit of all or any class of its creditors or proposes a reorganisation, moratorium or other administration involving any of them;
 - (vii) a party, if a body corporate, becomes unable to pay its debts when they fall due, resolves to wind itself up or otherwise dissolve of itself;

- (viii) where a nominee of the Recipient becomes bankrupt, proceedings are commenced to make the nominee bankrupt, has a trustee appointed in respect of any of their assets and does not remove this nominee and nominate a replacement within 3 Business Days of knowledge of the likelihood of the event occurring;
- (ix) an event analogous to any of those set out in clauses (i) to (vii) above occurs;
- (i) *Financial Year* means a period of 12 months commencing on 1 July and ending on 30 June in the following year;
- (j) *Panel* means the *Variety Classification Panel*;
- (k) *the word person* means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not;
- (l) *Service Fee* means the amount per Application payable by the Recipient to the Company in consideration of the Services, as set out in clause 4;
- (m) *Services* means the wheat classification services provided by the Company to the Recipient, which includes but is not limited to:
 - (i) assessment of quality data of wheat varieties requiring classification;
 - (ii) review of classification of wheat varieties in accordance with the requirements and processes set out in the Wheat Classification Guidelines;
 - (iii) detailed written reporting of the quality of the target line relative to the quality of known controls in accordance with the form set out in Schedule 1, as amended from time to time;
 - (iv) written certification of classification outcome within 2 weeks of a Panel meeting in accordance with the form set out in Schedule 2, as amended from time to time;
 - (v) the opportunity to meet with members of the Panel annually at a time, date and place to be agreed by the parties, to discuss classification decisions and other matters relating to the operation of the classification process;

- (vi) post on its website the dates for Panel meetings and Application cut off dates;
- (vii) hold such number, being not greater than 4, of 2-day Panel meetings in each year as the Company determines is appropriate given the number of Applications submitted by wheat breeding companies, including the Recipient;
- (viii) work with wheat breeding companies, including the Recipient, where possible, to prioritise Applications where the total number of Applications submitted exceeds the capacity of the Panel meeting. For the avoidance of doubt:
 - (A) the capacity of the Panel meetings is 20 Applications per day, which will be assessed on a first come first served basis unless prioritised by the wheat breeding companies;
 - (B) Applications in excess of the Panel capacity will be deferred to the next scheduled meeting of the Panel, unless it is the last meeting for the Year in which case, an additional Panel meeting will be scheduled;
 - (C) in the event that there are less than 10 Applications to be assessed at any Panel meeting, then that meeting will be cancelled and the Company agrees to notify the Recipient and wheat breeding companies of the cancellation of the meeting at least 1 week prior to that meeting. The Applications will be assessed at the next scheduled meeting of the Panel or within three (3) months if there is no Panel meeting scheduled;
- (n) *Variety Master List* means the Variety Master List maintained by the Company as amended from time to time and displayed at www.wheatquality.com.au;
- (o) *Wheat Classification Guidelines* means the Wheat Classification Guidelines as amended from time to time, a copy of which is available at www.wheatquality.com.au; and
- (p) *Year* means a calendar year, being a period of 12 months commencing on 1 January and ending on 31 December of the same year.

1.2. In this Agreement, unless otherwise indicated by the context:

- (a) words importing the singular include the plural and vice versa;

- (b) headings are for convenience only and do not affect interpretation of this Deed;
- (c) a reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Deed;
- (d) where any word or phrase is given a definite meaning in this Deed, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (e) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
- (f) a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;
- (g) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns;
- (h) a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally; and
- (i) a reference to a body, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

2. Term

- 2.1. This Agreement shall commence on 1 March 2011 and shall continue until it is terminated in accordance with clause 8.

3. Services

- 3.1. Subject to clause 3.4, the Company agrees to provide the Services to the Recipient on the terms set out in this Agreement.

- 3.2. Without in any way limiting or affecting the generality of clause 3.1, the Company in performing the Services must:
- (a) perform the Services at all times exercising due care, skill and judgment;
 - (b) perform the Services during the term of this Agreement in accordance with the terms of this Agreement;
 - (c) comply with any applicable laws, standards and formal rules of ethics; and
 - (d) prepare and submit to the Recipient such reports as are agreed in writing by the parties.
- 3.3. In addition to the Services, the Company agrees to provide such additional services to the Recipient as agreed from time to time. The cost of such additional services is to be determined by the Company in its absolute discretion.
- 3.4. The Company may review and amend the Services from time to time.

4. Service Fee

- 4.1. Subject to clause 4.4, the Service Fee shall be an amount of:
- \$1,500 for Applications lodged on or after 1 January 2012.
- 4.2. The Service Fee is payable upon lodgment of the Application.
- 4.3. Any Service Fee paid by the Recipient under this clause 4 is non-refundable.
- 4.4. The Company agrees to review the Service Fee at least annually and may, in its absolute discretion, change the Service Fee following any such review.

5. Applications

- 5.1. The Recipient agrees:
- (a) by 30 November in each Year, to notify the Company of the total number of Applications it intends to submit in the following Year;
 - (b) by 31 January in each Year, to estimate or confirm so far as is possible the total number of Applications to be submitted in that Year and provide details of the Panel meetings at which the Recipient requests that those Applications be considered.

- 5.2. An Application will not be assessed unless:
- (a) payment of the Service Fee has been received by the Company; and
 - (b) the Application is in the prescribed form (as required by the Company from time to time) and otherwise complies with the terms of the Wheat Classification Guidelines.
- 5.3. An Application will be assessed in accordance with the terms of the Wheat Classification Guidelines, as amended from time to time.
- 5.4. The Recipient agrees that, following completion of the assessment of a wheat variety and a decision in relation to an Application, it must notify the Company within 7 days of it naming a wheat variety to enable the Company to update the Variety Master List.
- 5.5. The Recipient agrees to review the Variety Master List annually to ensure that the names and classes of its wheat varieties are correctly recorded before the Variety Master List is published in each Year. The Recipient agrees to notify the Company by 31st July in each Year if any of the details of its wheat varieties are incorrect.
- 5.6. The Recipient agrees that if it fails to notify the Company of any change to the names and/or classes of its wheat varieties on the Variety Master List, until after the 31st July of the Year then the change to the variety information will not be effective for the coming harvest.

6. Feedback to Recipient

- 6.1. Defined terms used in this clause 6 have the same definition as set out in this Agreement or in the Wheat Classification Guidelines.
- 6.2. Where feedback is provided to the Recipient in the form of a Preliminary Classification:
- (a) any use made of such feedback by the Recipient will be at the Recipient's own risk;
 - (b) such feedback does not constitute a Classification Decision;
 - (c) such feedback does not guarantee the likely Class of a Final Classification should this be granted;
 - (d) disclosure or use of such feedback in any marketing program conducted by the Recipient must include disclosure of the following:

- (i) that it is a Preliminary Classification only and does not constitute a Final Classification;
- (ii) no Final Classification has been obtained and in the event no Final Classification is awarded, the variety will receive a default Classification of FEED for the purposes of delivery and payment generally;
- (iii) if a Final Classification is obtained then there is no guarantee that the Final Classification will be awarded at the same level as the Preliminary Classification;
- (iv) the Company is not liable in respect of any losses incurred by any party as a result of an Industry Participant failing to adequately communicate to third parties the pre-Classification nature of a Preliminary Classification;
and
- (e) Industry Participants are required to make their own assessment as to the basis for determining future release and bulking strategies.

6.3. The Recipient agrees that it will not in any way misrepresent to any person a Preliminary Classification or the outcome of the Classification Process. The Recipient further agrees to indemnify the Company in respect of any damage, loss, liability, cost, charges, claim and/or expense arising directly or indirectly as a result of any such misrepresentation.

7. Wheat Classification Council

- 7.1. In recognition of the Recipient entering into this Agreement, the Recipient shall be entitled to nominate a person for one of the 2 positions of the Council which are open to individuals nominated by and representing wheat breeding companies.
- 7.2. The appointment of a nominee to the Council is subject to approval by the Board. In determining whether to approve the nomination of a person to be a member of the Council the Board must have regard to the skills and experience of the nominee to ensure that their skills and experience provide for a diversity of skills and experience among the Council members and to ensure that the nominee is appropriately qualified in accordance with the Council Charter. For the avoidance of doubt, the Board may in its absolute discretion determine not to approve the nomination of a person to be a member of the Council.
- 7.3. Persons appointed to the Council will be subject to the terms of appointment determined by the Board from time to time. The terms of appointment of a member of the Council

who was nominated by and represents the wheat breeding companies shall include the following:

- (a) the Councillor is required to consult with all wheat breeding companies on matters before the Council;
- (b) the Councillor must represent the views of all wheat breeding companies in Council discussions; and
- (c) the Councillor must report to all wheat breeding companies on decisions of the Council.

7.4. Any person nominated to be on the Council and who is appointed by the Board shall be appointed for a term of one year and is eligible to be reappointed at the end of their term.

7.5. The appointment of a Councillor on the Council will be terminated:

- (a) by resolution of the Board; or
- (b) 30 days after the termination of this Deed in accordance with clause 8; or
- (c) immediately in the absolute discretion of the Company in the event that the Recipient who nominated the member breaches this Agreement.

8. Termination

8.1. Subject to clauses 8.2, either party may at any time during the Term terminate this Agreement upon giving at least 1 month's written notice of termination to the other party and upon the expiration of the relevant period of notice this Agreement is terminated.

8.2. In the event that an Event of Default occurs in relation to a party (*Defaulting Party*) the other party may by giving written notice to the Defaulting Party immediately give notice of the immediate termination of the Agreement.

9. Settlement of disputes

9.1. Appeals process

Where the Recipient wishes to appeal a decision relating to an Application the Recipient may activate the following appeal process:

	Action	Timeline For Response
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(a)	The Recipient writes to the Executive Officer (EO) of the Company, within 14 days of the decision being communicated to the Recipient, indicating the decision made, and requesting to appeal that decision. The Recipient can provide any information which they consider may assist in this process.	CEO will acknowledge receipt of the request within 7 days.
(b)	The Recipient must pay a fee of \$10,000 to the Company prior to convening of the appeals panel to cover the cost associated with convening the appeals panel. This fee will be refunded if the appeal is upheld.	Within 7 days of receipt of the request.
(c)	The EO contacts the Panel members responsible for the initial decision and requests that they provide any information and material considered by them in making their decision.	Within 7 days of receipt of the request.
(d)	The relevant Panel members provide the information and material to the EO.	Within 14 days of receipt of the request.
(e)	The EO must convene an appeals panel of three (3) independent technical experts to consider and determine the appeal. These experts will be selected by the Recipient from a group of five (5) technical experts appointed by the Company.	Within 14 days of receipt of the request.
(f)	The EO advises the determination of the appeals panel to the Recipient.	Within 28 days of receipt of the request.
(g)	Following advice of the determination, the Recipient is required to advise the Company whether they wish the next phase to be instituted.	Within 7 days of receipt of outcome of the appeals process.

9.2. Arbitration

- (a) If the Recipient disputes the outcome of the appeals process set out in clause 9.1, then the Recipient must, within 7 days of receipt of the outcome of the appeals process, give the Company a written notice identifying the particulars of the dispute and the dispute will be dealt with as follows:
 - (i) the dispute will be referred to arbitration;
 - (ii) unless otherwise agreed by the parties, the arbitrator will be appointed by the President of the Institute of Arbitrators, Australia (or such other body as carries on the functions of the Institute) or his nominee;
 - (iii) the arbitrator must conduct the proceedings in accordance with the Rules for the Conduct of the Commercial Arbitrations issued by the Institute of Arbitrators, Australia;
 - (iv) the arbitrator will not have the power to order the parties to take steps to achieve settlement including attendance at a conference conducted by the arbitrator.
- (b) When a notice of dispute is served under section 9.2 the Recipient must provide evidence that it has deposited with the Institute of Arbitrators, Australia the sum of \$5,000 by way of security for costs of the arbitration.
- (c) Each party may be represented by a duly qualified legal practitioner or other representative in the arbitration.

9.3. Limitation of Liability

The Recipient acknowledges and agrees that the liability of the Company is limited to the refund of the application fee paid by the Recipient pursuant to clause 9.1(b) and security for costs deposited with the Institute of Arbitrators, Australia pursuant to clause 9.2(b). For the avoidance of doubt, the Company will not be liable in respect of any other damage, loss, liability, cost, charge, claim and/or expense (including legal costs and expenses of the Recipient) howsoever arising, directly or indirectly, as a result of any decision relating to an Application or an appeal of any such decision.

10. Confidentiality

- 10.1. Each party agrees to keep the existence and terms of this Agreement confidential.

- 10.2. All information exchanged between the parties under this Agreement or during the negotiations preceding this Agreement is confidential to them and may not be disclosed to any person except:
- (a) for the purposes of publishing data and classification decisions for varieties that have been named and released;
 - (b) to employees, legal advisers, auditors and other consultants requiring the information for the purposes of this Agreement;
 - (c) with the consent of the party who supplied the information;
 - (d) if the information is, at the date that this Agreement is entered into, lawfully in the possession of the recipient of the information through sources other than the party who supplied the information;
 - (e) if required by law;
 - (f) if strictly and necessarily required in connection with legal proceedings relating to this Agreement; or
 - (g) if the information is generally and publicly available other than as a result of breach of confidence by the person receiving the information.

11. Privacy and retention of information and data

The parties agree that the Company has the right to store and retain data submitted as part of an Application for a period of up to 10 years for the purposes of:

- (a) reviewing classification decisions made in accordance with the Wheat Classification Guidelines;
- (b) reviewing the effectiveness or appropriateness of classification decisions made in accordance with the Wheat Classification Guidelines;
- (c) improving or altering the classification process as set out in the Wheat Classification Guidelines;
- (d) publishing data and classification decisions for varieties that have been named and released.

12. Costs and stamp duty

Each party will bear its own legal professional fees in relation to the preparation of this Agreement but the Company will bear any stamp duty, registration fees or other government charges (including any fines or interest for late payment) payable in respect of this Agreement, or any document prepared pursuant to this Agreement.

13. GST

- 13.1. If a party (*the Supplier*) incurs a liability to pay Australian goods and services tax (GST) in connection with a supply to the other party (*the Receiver*) pursuant to this Agreement, the consideration that the Receiver must pay to the Supplier for that supply is increased by an amount equal to the GST liability that the Supplier incurs in making the supply and that amount is payable at the same time as the consideration is payable in respect of that supply before that increase.
- 13.2. If the Receiver does not pay the amount of the GST liability incurred by the Supplier by the due date required under this clause, then in addition the Receiver must pay the Supplier interest on the amount outstanding from the due date until paid at the same rate from time to time as is payable by a taxpayer to the Commissioner of Taxation on overdue GST.

14. Relationship between the parties

Notwithstanding any other provision contained in this Agreement or any implication which might otherwise arise but for this clause, the relationship between the parties is not one of partnership, employer and employee or principal and agent.

15. Notices

- 15.1. A notice or other communication required or permitted to be given by one party to another must be in writing and:
- (a) delivered personally;
 - (b) sent by pre-paid mail to the address of the addressee specified in this Agreement; or
 - (c) sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee.

- 15.2. A notice or other communication is taken to have been given (unless otherwise proved):
- (a) if mailed, on the second Business Day after posting; or
 - (b) if sent by facsimile before 4 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 15.3. A party may change its address for service by giving notice of that change in writing to the other parties.

16. Waiver or variation

- 16.1. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 16.2. The exercise of a power or right does not preclude:
- (a) its future exercise; or
 - (b) the exercise of any other power or right.
- 16.3. The variation or waiver of a provision of this Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

17. Governing law and jurisdiction

- 17.1. This Agreement is governed by the laws of New South Wales.
- 17.2. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

18. Further assurance

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

19. Counterparts

This Agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the Agreement will be the date on which it is executed by the last party.

20. Whole agreement

In relation to the subject matter of this Agreement:

- (a) this Agreement is the whole agreement between the parties; and
- (b) this Agreement supersedes all oral and written communications by or on behalf of any of the parties.

21. Amendments to this Agreement

No amendment to this Agreement shall be effective unless it is made in writing and executed by all the parties.

22. No reliance on warranties and representations

In entering into this Agreement, each party:

- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Agreement made by any person; and
- (b) has relied entirely on its own enquiries in relation to the subject matter of this Agreement.

This clause does not apply to warranties and representations that this Agreement expressly sets out.

23. Severance

If any part of this Agreement is invalid or unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

24. No merger

Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

25. Consents and approvals

Where this Agreement gives any party a right or power to consent or approve in relation to a matter under this Agreement, that party may withhold any consent or approval or give consent or approval conditionally or unconditionally. The party seeking consent or

approval must comply with any conditions the other party imposes on its consent or approval.

26. No assignment

The rights of a party pursuant to this Agreement may not be assigned nor may the obligations of a party be subcontracted without the prior written consent of the other party, such consent not to be unreasonably withheld.

Schedule 1 – Format of reports

Zone				
	Control 1	Control 2	Control 3	Target line 1
Grade				
Classification type				
General Comment				
Properties				
Milling Quality	Good	Good	Good	
Flour Colour	Acceptable	Acceptable	Acceptable	
Water Absorption	Acceptable	Marginal	Acceptable	
Dough Properties	Good for APH	Good strength for APH despite marginal extensibility	Good balance and strength for AH	
<i>Extensibility</i>	Good	Marginal	Good	
<i>Max Resistance</i>	Good		Acceptable	
<i>Balance</i>		Borderline		
Flour Paste Viscosity	Medium & Good	High & Acceptable	Medium & Good	
YAN	Poor for QLD	Very Good for QLD	Poor for QLD	
Straight Dough	Excellent	Marginal	Acceptable - Good	
Rapid Dough	Acceptable	Acceptable	Acceptable	
<i>Mixing Time</i>	Undesirable long mixing time	Undesirable long mixing time	Acceptable mixing time	
Sponge and Dough	Excellent	Good	Acceptable	
Steam Bread				
Biscuit				

Schedule 2 – Format of certificate

CLASSIFICATION CERTIFICATE

DATE:

This is to certify that <insert name/number of line> has achieved the following classification outcomes in the Wheat Quality Australia Limited wheat variety classification process. *Please note that this information is current at the date of issue.*

Classification Stage	Classification Zone	Classification
<i>Final/Preliminary/Default</i>	QLD	
	NNSW	
	CNSW	
	SNSW	
	VIC	
	SA	
	WA	

Authorised by

Cindy Mills
Executive Officer, Wheat Quality Australia

Signing Page

Executed as an Agreement.

EXECUTED for and on behalf of **WHEAT QUALITY AUSTRALIA LIMITED** (ABN 86 147 439 656) in accordance with Section 127(1) of the *Corporations Act 2001* by authority of the Directors:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

EXECUTED for and on behalf of
(ABN) in accordance
with Section 127(1) of the *Corporations Act 2001* by authority of the Directors:

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary*

EXECUTED for and on behalf of **//14//**
(ABN **//14a//**) in accordance with Section
127(1) of the *Corporations Act 2001*:

Name of Sole Director/Secretary

Signature of Sole Director/Secretary*

SIGNED for **//15//** (ABN **//15a//**) by its duly
authorised Attorney who warrants that the
Power of Attorney has not been revoked:

Signature of Witness

Signature of Attorney

Name of Witness

Name of Attorney*